



Billing Code: 8025-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 142, and 146

RIN 3245-AG83

Civil Monetary Penalties Inflation Adjustments

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties.

DATES: Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Date: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AG83 by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail or Hand Delivery/Courier: Arlene Embrey, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Arlene Embrey, Trial Attorney, 409 Third Street, SW, Washington, DC 20416, and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether or not the information will be published.

FOR FURTHER INFORMATION CONTACT: Arlene Embrey, 202-205-6976, or at [arlene.embrey@sba.gov](mailto:arlene.embrey@sba.gov).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Improvements Act), Public Law 114-74, 129 Stat. 584. This act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Inflation Adjustment Improvements Act requires agencies to issue an interim final rule (IFR) to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment; and (2) make subsequent annual adjustments for inflation no later than January 15 of each subsequent year. The 2015 Inflation Adjustment Improvements Act also authorizes agencies to implement the annual adjustments without regard to the requirements for public notice and comment or

delayed effective date under the Administrative Procedures Act, 5 U.S.C. 553(b)(B) and (d)(3), respectively.

In addition, based on the definition of a “civil monetary penalty” in the 1990 Inflation Adjustment Act, agencies are to make adjustments only to the civil penalties that (i) are for a specific monetary amount as provided by federal law or have a maximum amount provided for by federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. Therefore, penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not to be adjusted.

On May 19, 2016, SBA complied with the first requirement by publishing an IFR with the initial adjustments to the civil penalties SBA is responsible for assessing or enforcing. 81 FR 31489. These initial adjustments to the penalties became effective on August 1, 2016. In this rule SBA complies with the second requirement by making the first annual inflation adjustment to these penalties.

Consistent with the 2015 Inflation Adjustment Improvements Act, as well as the guidance issued by the Office of Management and Budget in M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Act Improvements Act, (December 16, 2016), the formula for calculating the annual adjustments is based on the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the adjustment. Specifically, the change between the October CPI-U preceding the date of adjustment and the prior year’s CPI-U, which for the adjustments in this rule is the percentage change between October 2016 CPI-U

(241.729) and October 2015 CPI-U (237.838) or 1.01636. Therefore, the annual adjustments identified in this rule were obtained by applying this multiplier to the most recent penalty amounts established in the IFR published in May 2016.

## II. Civil Money Penalties Adjusted by This Rule

This rule makes adjustments to civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBIAct), the Program Fraud Civil Remedies Act and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

### 1. 13 CFR 107.665 – Civil Penalties

SBA licenses, regulates and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the SBIAct, 15 U.S.C. 687g, SBA may impose a penalty on any SBIC that fails to comply with SBA's regulations or directives governing the filing of regular or special reports. The penalty for non-compliance is incorporated in § 107.665 of the SBIC program regulations.

The current civil penalty amount for violation of this requirement, as adjusted in May 2016, is \$250. This amount was multiplied by the multiplier of 1.01636 to reach a product of \$254, rounded to the nearest dollar. Thus, the new civil penalty amount is \$254 for each and every day an SBIC fails to file a required report.

### 2. 13 CFR 120.465 – Civil penalty for late submission of required reports.

According to the regulations at § 120.465, any small business lending company (SBLC) that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to the civil penalty amount

stated in § 120.465(b) for each day the company fails to file the report, unless the small business lending company can show that there is reasonable cause for its failure to file. This penalty, which is authorized by section 23(j)(1) of the Small Business Act, 15 U.S.C. 650(j)(1), was adjusted in the May 2016 IFR from \$5,000 to \$6,229. However, due to a typographical error, the amount was published incorrectly in the May 2016 IFR as \$6,299. The amount should have been stated as \$6,229, the product of the then \$5,000 penalty multiplied by 1.24588, the multiplier established under the 2015 Inflation Adjustment Improvements Act.

In light of this correction, this rule amends § 120.465(b) to adjust this civil penalty by multiplying \$6,229, the correct product under the guidelines for the May 2016 IFR, by the multiplier of 1.01636 to reach a product of \$6,331, rounded to the nearest dollar. Thus, the new civil penalty amount is not more than \$6,331 for each and every day an SBLC fails to file the respective report.

### 3. 13 CFR 142.1 – Overview of Regulations

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801-3812. Under the current regulation at § 142.1(b), a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than \$10,781, for each statement or claim.

This rule amends § 142.1(b) to adjust the current civil penalty to \$10,957 per statement or claim. The adjusted civil penalty amount was calculated by multiplying the current civil penalty of \$10,781 by the multiplier of 1.01636 to reach a product of \$10,957, rounded to the nearest dollar.

#### 4. 13 CFR 146.400 – Penalties

SBA’s regulations at 13 CFR part 146 govern lobbying activities by recipients of federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352, which was established in 1989 and impose penalties on any recipient that fails to comply with certain requirements in the part. Specifically, under § 146.400(a) and (b), penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary. The regulations at § 146.400(a) and (b) were amended by the May 2016 IFR to adjust the penalty amounts of “not less than \$10,000 and no more than \$100,000” to “not less \$18,936 and no more than \$189,361” for each prohibited expenditure or failure to file or amend the disclosure forms. The May 2016 IFR also amended § 146.400(e) to (1) adjust the civil penalty that may be imposed for a first time violation of § 146.400(a) and (b), to a maximum of \$18,936, absent aggravating circumstances, and (2) adjust the civil penalty that may be imposed for second and subsequent offenses to not less \$18,936 and no more than \$189,361.

This rule amends § 146.400(a) and (b), to adjust the current civil penalty amounts to “not less than \$19,246 and not more than \$192,459.” The current civil penalty amounts of \$18,936 and \$189,361 were multiplied by the multiplier of 1.01636 to reach a product of \$19,246 and \$192,459, respectively, rounded to the nearest dollar.

This rule also amends § 146.400(e) to adjust the civil penalty that may be imposed for a first time violation of § 146.400(a) and (b) to a maximum of \$19,246 and to adjust the civil penalty that may be imposed for second and subsequent offenses to not less than \$19,246 and not more than \$192,459. The current civil penalty amounts of

\$18,936 and \$189,361 were multiplied by the multiplier of 1.01636 to reach a product of \$19,246 and \$192,459, respectively, rounded to the nearest dollar.

### III. Justification for Interim Final Rule

The 2015 Inflation Adjustment Improvements Act specifically authorizes agencies to promulgate rulemaking for the annual adjustment to their civil monetary penalties, “notwithstanding section 553 of title 5, United States Code,” which generally requires agencies to provide the public with an opportunity to comment on the rule making before the rule can be effective. 5 U.S.C. 553(b)

### IV. Justification for Immediate Effective Date

Section 553(d) requires agencies to publish their rules at least 30 days before their effective dates, except if the agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest. By expressly exempting this rule from section 553, the 2015 Inflation Adjustment Improvements Act has provided the agency with the good cause justification for this rule to become effective on the date it is published in the Federal Register.

Compliance with Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612).

#### Executive Order 12866

The Office of Management and Budget has determined that this interim final rule is not a significant regulatory action under Executive Order 12866. This is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

#### Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this interim final rule has no federalism implications warranting preparation of a federalism assessment.

#### Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

#### Regulatory Flexibility Act (RFA)

The RFA requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As stated above, SBA has express statutory authority to issue this rule without regard to the notice and comment. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

List of Subjects

#### 13 CFR Part 107



Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

13 CFR Part 146

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 142, and 146 as follows:

**PART 107 – SMALL BUSINESS INVESTMENT COMPANIES**

1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.665 [Amended]

2. In § 107.665, remove “\$250” and add in its place “\$254”.

**PART 120 – BUSINESS LOANS**

3. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Public Law 111-5, 123 Stat. 115, Public Law 111-240, 124 Stat. 2504; Public Law 114-113, 129 Stat. 2242.

§ 120.465 [Amended]

4. Paragraph (b) of § 120.465 is amended by removing “\$6,299” and adding in its place “\$6,331”.

#### PART 142 – PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

5. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

##### § 142.1 [Amended]

6. Paragraph (b) of § 142.1 is amended by removing “\$10,781” and adding in its place “\$10,957”.

#### PART 146 – NEW RESTRICTIONS ON LOBBYING

7. The authority citation for part 146 continues to read as follows:

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); 15 U.S.C. 634(b)(6).

##### § 146.400 [Amended]

8. Paragraphs (a), (b), and (e) of § 146.400 are amended by removing “\$18,936” wherever it appears and adding in its place “\$19,246” and by removing “\$189,361” and adding in its place “\$192,459”.

Dated: February 3, 2017.

Joseph P. Loddo,  
Acting Administrator.

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